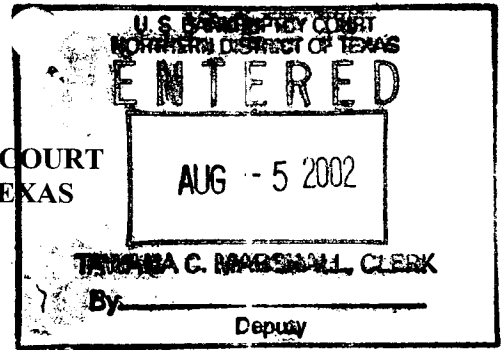


IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION



IN RE:

KITTY HAWK, INC., et. al

Debtors

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Chapter 11

Case no. 400-42069-BJH and  
Case nos. 400-42141 through  
Case no. 400-42149

Jointly Administered Under  
Case no. 400-42141-BJH

**FINDINGS OF FACT, CONCLUSIONS OF LAW REGARDING  
DEBTORS' FINAL PLAN OF REORGANIZATION**

Kitty Hawk, Inc. ("KH Inc."), and its subsidiaries (the "Subsidiaries"), Kitty Hawk Aircargo, Inc. ("Aircargo"), Kitty Hawk Charters Inc. ("Charters"), Kitty Hawk International, Inc., Kitty Hawk Cargo, Inc., Aircraft Leasing, Inc., American International Travel, Inc., Flight One Logistics, Inc., Longhorn Solutions, Inc. and OK Turbines, Inc. (together, the "Debtors"),<sup>1</sup> having filed with the Court on or about May 24, 2002, the Debtors' Joint Plan of Reorganization Dated May 22, 2002 (the "Plan") [together with the "Amendments" as defined in paragraph 9 below and as reflected in Exhibit "A" to the Order Confirming Debtor's Final Plan of Reorganization (the "Final Plan")] under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"); and the Debtors' Disclosure Statement Under 11 U.S.C. § 1125 in Support of the Debtors' Joint Plan of Reorganization Dated May 22, 2002 (the "Disclosure Statement"), having been filed with and approved by the Court, pursuant to that certain Order dated May 23,

<sup>1</sup> References herein to the Debtors shall be deemed to refer to the Debtors in the above-referenced bankruptcy cases, to the extent the context of such reference applies to a time period prior to the Effective Date, and shall be deemed to refer to the Reorganized Kitty Hawk, to the extent the context of such reference applies to a time period on or after the Effective Date.

2635

2002 (the "Disclosure Statement Order"), as containing "adequate information" pursuant to Section 1125 of the Bankruptcy Code; and copies of (a) the Plan, (b) the Disclosure Statement, (c) the Disclosure Statement Order, (d) a form of Ballots (only for impaired creditors and equity security holders); (e) a Notice of Deadline for Submitting Ballots; and (f) a letter from the Creditors Committee Co-Chairs encouraging unsecured creditors to vote in favor of the Plan, having been transmitted to all Creditors,<sup>2</sup> the United States Trustee, the Securities and Exchange Commission and other parties-in-interest entitled to receive same pursuant to the Disclosure Statement Order and applicable law and rules and a Notice to Stockholders of Kitty Hawk, Inc. Regarding the Debtors' Joint Plan of Reorganization Dated May 22, 2002 having been transmitted to all Interest Holders; and the Disclosure Statement Order having fixed (a) June 25, 2002, as the last date by which Ballots were required to be submitted and also as the last date that any objections to confirmation of the Plan (the "Objections") were required to be filed with the Court and received by the Debtors, and (b) July 2, 2002 at 9:00 a.m., Dallas, Texas Time, as the date and time for the commencement of the hearing pursuant to Sections 1128 and 1129 of the Bankruptcy Code (the "Confirmation Hearing") to consider confirmation of the Plan and any Objections thereto; and due notice of the Confirmation Hearing and the date by which Ballots and Objections were due having been given in accordance with the terms of the Disclosure Statement Order; and the Confirmation Hearing having been commenced before the Court on July 2, 2002 at 9:00 a.m., Dallas, Texas Time and concluded, after non-consecutive hearing dates, on July 24, 2002; and counsel for the Debtors, the Agent, the Creditors Committee and other parties having appeared for submission of the Findings of Fact and Conclusions of Law

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<sup>2</sup> Capitalized terms used in this Order and not otherwise defined shall have the respective meanings ascribed to such terms in the Plan and/or Disclosure Statement.

Regarding Debtors' Final Plan of Reorganization and the Order Confirming Debtors' Final Plan of Reorganization ("Confirmation Order"); and the Court having considered and overruled all Objections to the confirmation of the Final Plan not withdrawn or compromised; and upon the consideration of the record of the Confirmation Hearing and the statements of counsel, the Court makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. On May 1, 2000 (the "Petition Date"), the Debtors each filed their voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.<sup>3</sup> Since the Petition Date, the Debtors have continued to manage their assets as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtors' Chapter 11 cases. An official committee of unsecured creditors was appointed by the Office of the United States Trustee on May 12, 2000 (the "Creditors Committee").

2. KH Inc. directly owns 100% of the equity of each of the other Debtors and is a publicly held corporation with publicly held debt.

3. KH Inc., a Delaware corporation, is essentially a holding company. On the Petition Date, KH Inc. was liable to Wells Fargo Bank (Texas), N.A., as Agent for a Bank Group, pursuant to a \$100,000,000 Revolving Credit Facility guaranteed by the Subsidiaries and a \$45,900,000 Term Loan Facility and was liable to the holders of the publicly held 9.95% Senior Secured Notes due 2004 (the "Senior Notes") in the principal amount of \$340,000,000 as of November 17, 1997, which was guaranteed by the Subsidiaries. KH Inc.'s assets are (a) certain intercompany receivables; (b) cash; and (c) real estate interests.

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<sup>3</sup> With the exception of Flight One Logistics, Inc. which filed its voluntary Chapter 11 petition on April 27, 2000.

4. The Bank debt, the \$340 million of Senior Notes (plus the Senior Notes' accrued prepetition interest) and an estimated \$106 million in trade debt are the prepetition, non-intercompany indebtedness owed by the Debtors in these Chapter 11 cases.

5. The need to enter into a financial restructuring of the Senior Notes and trade debt arose due to unforeseen events triggering a cash crisis in April 2000 coupled with a precipitous decline in the value of the Debtors' assets. When KH Inc. issued a press release on April 11, 2000 describing its likely inability to pay the May 15, 2000 interest payment on the Senior Notes, the Debtors' trade credit evaporated and its available cash plummeted, thus necessitating a filing.

6. Pursuant to the Disclosure Statement Order, the Debtors began formal solicitation of the Plan on May 28, 2002, upon mailing the solicitation package to creditors and parties-in-interest.

7. The Final Plan contemplates converting all general unsecured claims to stock in Reorganized Kitty Hawk after all pre-petition stock has been cancelled.

8. The Final Plan further contemplates that the Debtors will not be required to seek regulatory approval from any party for various aspects of the Final Plan.

9. On July 1, 2002, the Debtors filed the Revised Amendments to Debtors' Joint Plan of Reorganization Dated May 22, 2002 with the Bankruptcy Court, and served it on counsel for the Creditors Committee, the United States Trustee, the Securities and Exchange Commission, and various other parties in interest, including all parties who objected to confirmation of the Plan. The Debtors filed with the Bankruptcy Court and served on July 2, 2002 the Second Revised Amendments to Debtors' Joint Plan of Reorganization dated May 22, 2002 and on July 23, 2002 filed and served the Third Revised Amendments to Debtors' Joint

Plan of Reorganization dated May 22, 2002 and made an oral motion to modify the Plan on July 24, 2002 (collectively, the “Amendments”). The Court finds that the Amendments do not constitute material modifications and do not adversely change the treatment of the Claim of any creditor or the Interests of any equity security holder and, further, will not cause the Final Plan to fail to meet the requirements of Sections 1122 and 1123 of the Bankruptcy Code.

10. The Amendments address and resolve the Objections to Confirmation filed by the following parties:

- (a) Dallas County, Tarrant County, Salt Lake County and City of Arlington taxing authorities (Docket no. 2501)(Amendments ¶¶ 6 and 8);
- (b) Texas Comptroller of Public Accounts (Docket no. 2555)(Amendments ¶¶ 6, 7, 8 9, 10 and 11);
- (c) United States of America (IRS) (Docket no. 2556)(Amendments ¶¶ 8 9 and 11); and
- (d) Wren Equipment Finance Ltd. (Docket no. 2554) (Amendments ¶¶2 and 3).

11. The Objection filed by the Port of Seattle (Docket no. 2557) was resolved by a stipulation (Docket no. 2597). Other concerns raised by the United States were also resolved by stipulation (Docket no. 2514).

12. The Debtors were unable to resolve Objections to Confirmation filed by the following parties:

- (a) Wells Fargo Bank, N.A. as Agent for the Bank Group (Docket no. 2562);
- (b) 1st Source Bank (Docket no. 2561);
- (c) Tom Christopher (Docket no. 2599);
- (d) Paul E. Voilas (Docket no. 2569);
- (e) William Whitten (Docket no. 2571); and

(f) Charles and Janet Dietzman (Docket no.2531).

Mr. Christopher is the largest shareholder of Kitty Hawk, Inc. and also asserts claims against the estate. Mr. Voilas, Mr. Whitten, and the Dietzmans did not appear at the Confirmation Hearing but represented in their Objections that they are shareholders of Kitty Hawk, Inc.

13. The Disclosure Statement Order and Articles 1.89 and 7.1 of the Final Plan provide for a "Plan Supplement" to be filed with the Court at least fifteen (15) days prior to the date on which the Confirmation Hearing was scheduled to first commence. Such Plan Supplement was to consist of various documents that were contemplated as being necessary or advisable to effectuate the Final Plan. The Plan Supplement was, in fact, filed on June 17, 2002, and the documents that constituted the Plan Supplement were attached thereto as Exhibits A-G, and consisted specifically of the following<sup>4</sup>:

Exhibit "A" – Proposed forms of Amended and Restated Bylaws and Amended and Restated Certificates of Incorporation for Kitty Hawk Cargo, Inc. and Kitty Hawk Aircargo, Inc.

Exhibit "B" – List of the executory contracts and unexpired leases to be assumed pursuant to the Plan.

Exhibit "C" – The Settlement Agreement compromising and settling Termination for Convenience Claim against United States Postal Service, including Amendment #1 and the Stipulation with United States regarding various claims.

Exhibit "D" – Aircraft Use Agreement between Kitty Hawk Aircargo, Inc. and the Kitty Hawk Liquidating Trust, by Langdon Asset Management, Inc., its Trust Manager.

Exhibit "E" – Registration Rights Agreement.

Exhibit "F" – Proposed loan documents for Wells Fargo Bank, Agent in the event the Debtors elect to pay the Agent under the option provided in the Plan for payments over a one year period.

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<sup>4</sup> The documents may be revised to clarify or correct inaccuracies or pursuant to further negotiations among the parties and the Amendments.

Exhibit “G” – Documents regarding the settlement with Pegasus Aviation regarding aircraft its affiliates lease to Kitty Hawk Aircargo.

14. The Plan Supplement is for all purposes deemed incorporated into the Final Plan as if fully set forth therein.

15. The classifications and treatments for Claims and Interests are set forth in Articles 2, 3, and 4 of the Final Plan, and the plan implementation procedures are set forth in Article 8 of the Final Plan, and the same comply with the applicable provisions of the Bankruptcy Code and Rules, including Sections 1122, 1123, and 1129 of the Bankruptcy Code, and are reasonable and appropriate.

16. The Final Plan, as required by Section 1123 of the Bankruptcy Code:

- a. designates, subject to Section 1122, classes of Claims, other than Claims of a kind specified in Section 507(a)(1), 507(a)(2) or 507(a)(8), and classes of Interests;
- b. specifies every class of Claims or Interests that is not impaired under the Final Plan;
- c. specifies the treatment of any class of Claims or Interests that is impaired under the Final Plan;
- d. provides the same treatment for each Claim or Interest of a particular class, unless the holder of a particular Claim or Interest agrees to a less favorable treatment of such particular Claim or Interest;
- e. provides adequate means for the Final Plan’s implementation;
- f. provides that Reorganized Kitty Hawk’s<sup>5</sup> charter shall include a provision prohibiting the issuance of nonvoting equity securities as well as provisions to limit the voting rights of foreign individuals and entities in domestic air carriers; and
- g. contains only provisions that are consistent with the interests of Creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the Final Plan

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<sup>5</sup> “Reorganized Kitty Hawk” or “Reorganized Debtors” means the surviving Debtors after (i) the Effective Date and (ii) the mergers contemplated by Section 8.3 of the Final Plan.

and any successor to such officer, director, or trustee.

17. The Final Plan complies with the applicable provisions of Title 11, and the Debtors have complied with the applicable provisions of Chapter 11, as required by Section 1129(a)(1) and (a)(2) of the Bankruptcy Code.

18. The Final Plan has been proposed in good faith and not by any means forbidden by law as required by Section 1129(a)(3) of the Bankruptcy Code.

19. Any payment made or to be made by the Debtors, for services or for costs and expenses in or in connection with the Reorganization Case, or in connection with the Final Plan and incident to the Reorganization Case, has been approved by, or is subject to the approval of the Court as reasonable, as required by Section 1129(a)(4) of the Bankruptcy Code.

20. As required by Section 1129(a)(5) of the Bankruptcy Code, the Debtors have disclosed the identity and affiliations of the individuals proposed to serve, after confirmation of the Final Plan, as the officers and directors of Reorganized Kitty Hawk, and the continuance of these individuals in such capacities is consistent with the interests of Creditors and equity security holders and with public policy. Additionally, the Debtors have disclosed the identity of any insider that will be employed or retained by Reorganized Kitty Hawk, and the nature of any compensation for such insider. The initial directors of Reorganized Kitty Hawk are Tilmon J. Reeves, James R. Craig, Robert Peiser, Thomas Hacker, John Malloy, Gerald Gitner and Myron Kaplan.

21. The Final Plan does not provide for a “rate change” as contemplated by Section 1129(a)(6) of the Bankruptcy Code.

22. As required by Section 1129(a)(7), with respect to each “impaired” Class of Claims or Interests, each holder of a Claim or Interest of such Class has either accepted the Final



Plan or will receive or retain under the Final Plan, on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount such holder would receive or retain if the Debtors were liquidated in Chapter 7.

23. Classes 1, 2, 4, 5, 6, 7, 8 and 9 are “impaired.” Classes 2, 4, 6, and 7A, 7B, 7C, 7D, 7F, 7G, 7H, 7I, and 7J accepted the Final Plan.

24. Class 1 (Bank Group Claims) rejected the Final Plan. The Court made oral findings and conclusions of law on the record on July 24, 2002, regarding the specific and extensive objections of the Bank Group to Confirmation. The Court finds that the Final Plan does not discriminate unfairly against the Bank Group and is fair and equitable as to the Bank Group.

25. Class 5 consists of Allowed Priority Claims against the Debtors. Holders of Priority Claims in KH Inc. and Aircargo voted to reject the Final Plan. No holder of a Priority Claim filed an objection to Confirmation. The Final Plan provides for payment in full of Allowed Priority Claims on the Effective Date or the Allowance Date, whichever is first. This treatment meets the requirements of 11 U.S.C. §1129 (a)(9)(B)(ii).

26. Class 7E includes Other Unsecured Claims against Charters. Class 7E rejected the Final Plan. No holder of Claims or Interests junior to Class 7E will receive any distribution under the Final Plan. Therefore, the Final Plan meets the requirements of Section 1129(b)(2)(B)(ii) with respect to Class 7E and is fair and equitable as to Class 7E. The Final Plan's treatment of Class 7E does not unfairly discriminate against Class 7E because Class 7E will receive the same treatment as every other Class of Unsecured Claims, except Class 6 which has agreed to accept a lesser treatment.

27. Classes 8 and 9 (Interest Holders) are deemed to have rejected the Final Plan. There are no Interests junior to Classes 8 and 9 and thus no junior Interests will receive any distribution under the Final Plan. Therefore, the Final Plan meets the requirements of Section 1129(b)(2)(C)(ii) with respect to Classes 8 and 9 and is fair and equitable as to such Classes.

28. The Final Plan has been accepted by the requisite majority of impaired Creditors because at least one class<sup>6</sup> in each Debtor which was entitled to vote pursuant to Section 1126 of the Bankruptcy Code voted to accept the Final Plan. The vote with respect to the Final Plan was set forth in the Ballot Tally submitted by the Debtors and is incorporated and adopted herein by reference.

29. The Final Plan complies with Section 1129(a)(9) of the Bankruptcy Code because the holders of the type of Claims specified in that section will receive cash in the allowed amounts of their Claims on the Effective Date, unless a holder agrees to different treatment. In accordance with the Court's oral findings and conclusions on the record, the Court finds that 1<sup>st</sup> Source is not the holder of a Claim governed by Section 1129(a)(9) or, in the alternative, that 1<sup>st</sup> Source has agreed to be treated in accordance with the Aircraft Security Agreement between Aircargo and 1<sup>st</sup> Source.

30. While there are certain risks in connection with implementation of the Final Plan, the risks were disclosed and, after consideration of the record as a whole, the Court finds that the Final Plan is feasible. Confirmation and consummation of the Final Plan are not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors or any successor of the Debtors under the Final Plan, and accordingly, the Final Plan complies with

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<sup>6</sup> Class 2 accepted in each Debtor's case.

Section 1129(a)(11) of the Bankruptcy Code. The structure of the Final Plan and mechanisms for implementation of the Final Plan are reasonable and appropriate.

31. All fees payable to date under 28 U.S.C. § 1930 have been paid, and the Final Plan provides for the payment of all such fees in accordance with Public Law 104-99, in compliance with Section 1129(a)(12) of the Bankruptcy Code.

32. Section 1129(a)(13) of the Bankruptcy Code is not applicable to the Final Plan as there are no retiree benefits at issue with respect to the Debtors.

33. The Court finds that the Final Plan complies with Section 1129(b) and can be confirmed over the rejection of the Bank Group, the Priority Claimants of KH Inc. and Aircargo and the Class 7E unsecured creditors.

34. The Debtors timely elected the “cash out” option for the treatment of Class 1 (Bank Group) Claims. However, because of the pending disputes regarding the amount and calculation of those claims, the Debtors shall not pay the Agent for the Bank Group in cash on the Effective Date, but the Debtors shall instead satisfy the Bank Group Claims with (a) a cash escrow of \$6 million to be deposited into an interest-bearing account at Wells Fargo Bank (Texas), N.A. (“Wells Fargo”) with accrued interest to become part of such escrow and (b) cash proceeds held by the Indenture Trustee relating to non-Indenture collateral of \$3 million, by the Indenture Trustee segregating \$3 million of the proceeds it holds relating to non-Indenture collateral in a deposit account and granting a first priority security interest in the account (but not the interest earned on the original \$3 million deposit) to secure the Allowed Bank Group Claims. The Security Agreement governing the lien on the deposit account will provide that the rights and remedies of the Bank Group with respect to its lien will be determined by order of the Court and the Indenture Trustee will not disburse funds from the account except upon order of the

Court. Together, these shall be referred to as the Class 1 Escrow Funds. To the extent that the Debtors make payments to the Agent for the benefit of the Bank Group between July 2, 2002 and the Effective Date, the \$6 million that the Debtors are to contribute to the Class 1 Escrow Funds will be reduced by the amount of such payments.<sup>7</sup> The Agent is authorized to hold payments made by the Debtors before the Effective Date for the benefit of the Bank Group pending final determination of the Allowed Bank Group Claims, provided that the Debtors will receive credit against their obligations to the Bank Group (if any) for payments made by the Debtors before the Effective Date as if the Agent had immediately applied such payments upon the Agent's receipt of the payments.

35. Neither Wells Fargo, any member of the Bank Group, the Indenture Trustee nor any other party shall have any interest, or any security interest, in any accounts receivable or general intangibles of any Debtor, or of Reorganized Kitty Hawk after the Effective Date, other than the Class 1 Escrow Funds. At any time upon or after the Effective Date, any and all such accounts receivable sold to KBK Financial, Inc. ("KBK") or other purchasers, will be free and clear of any interest of any creditor in this proceeding, and KBK and such other purchasers, apart from the accounts receivable they purchase, will also be granted a first priority security interest in all receivables not purchased, to secure Reorganized Kitty Hawk's obligations under the purchase documents. Reorganized Kitty Hawk may assign to KBK or other purchasers, and grant to KBK or other purchasers security interests in, such accounts receivable, general intangibles, and related property, but excluding the Class 1 Escrow Funds. No further Court order is required for the Debtors and KBK and any other purchaser to negotiate, execute and

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<sup>7</sup>For example, if the Debtors pay \$1.5 million to the Agent between July 24, 2002 and the Effective Date, the Debtors will only be required to contribute \$4.5 million to the Class 1 Escrow Funds and the total Class 1 Escrow Funds will be \$7.5 million.

deliver documents to carry out the purposes of the July 3 Agreement between certain of the Debtors and KBK relating to the purchase by KBK of accounts receivable, as a purchase and not as a loan pursuant to Section 306.103 of the Texas Finance Code and Section 9.109(d) of the Texas Business and Commerce Code or to perform their obligations under those documents.

36. The Debtors have complied with all solicitation requirements of the Disclosure Statement Order, and the Court finds that the Debtors' solicitation in connection with the Final Plan was fair and appropriate and in accordance with the Bankruptcy Code and the Bankruptcy Rules.

37. The Final Plan provides for the assumption by the Reorganized Debtors of various executory contracts and leases and the rejection of certain others. The Reorganized Debtors' assumption and/or rejection, as the case may be, of the executory contracts and leases, in the context of the Final Plan taken as a whole, reflects the Debtors' sound business judgment and is reasonable and in the best interests of the Estates.

38. The Final Plan provides for a number of settlements of various disputes, including:

- (a) The dispute between the Noteholders and Debtors regarding the alleged fraudulent transfers when the various subsidiaries guaranteed the debts of Kitty Hawk, Inc.;
- (b) The dispute between the Noteholders and certain Debtors regarding adequate protection for certain Debtors' use of the Noteholders' 727 Collateral;
- (c) The settlement of the claim against the USPS for terminating the W-Net contract for the convenience of the USPS; and,

(d) The settlement of claims among certain Debtors and the United States (other than the Internal Revenue Service) in the form of the Stipulation previously provided to the Court and parties in the Plan Supplement.

Cumulatively, they are referred to herein as the “Settlements” and singularly as a “Settlement.”

39. In each of the Settlements, the Court was provided with sufficient evidence to understand the issues presented, the risks and benefits of litigation and the reasonableness of settling and resolving the disputed claims as outlined in each of the Settlements. The votes by the creditors also apprized the Court of the creditors views toward, and preference for, the Settlements set forth in paragraphs 38 (a), (b) and (c). The Debtors have met the requirements of Bankruptcy Rule 9019 with respect to the Settlements. Each of the Settlements is reasonable and should be approved. The Settlement with the Noteholders and Indenture Trustee, as incorporated in the Final Plan and as more particularly described in the Disclosure Statement, settles and resolves the adequate protection claims and the secured and unsecured claims of the Indenture Trustee and the Noteholders.

40. The Exculpations and Limitations of Liability set forth in Section 10.3 of the Final Plan are reasonable and appropriate as to the “Exculpated Persons” named in that Section. Furthermore, the Releases set forth in Articles 8.13 and 8.15 of the Final Plan are reasonable and appropriate as to the parties and/or “Releasees” named in those Sections.

41. The undertakings of Reorganized Kitty Hawk (including issuing new stock after the Effective Date), pursuant to Article 8 of the Final Plan are reasonable and appropriate. The stock and other obligations of Reorganized Kitty Hawk issued and distributed pursuant to the Final Plan are being issued by a debtor and/or by a successor to a debtor (the Reorganized Kitty Hawk), pursuant to the Final Plan, and are being issued in exchange for Claims against the

Debtors, as contemplated by Section 1145 of the Bankruptcy Code and are, thus, exempt from registration under any federal, state and local laws, to the extent provided by Section 1145.

42. The Reorganized Debtors' Amended Articles of Incorporation do not violate the prohibitions of 11 U.S.C. § 1123(a)(6).

43. In accordance with the Plan, two members of the Board of Directors of Reorganized Kitty Hawk, Tilmon J. Reeves and James R. Craig, have been selected by the Debtors, and five members of the Board, John Malloy, Myron Kaplan, Robert Peiser, Thomas Hacker and Gerald Gitner, have been selected by the Unofficial Noteholders' Committee.

44. The Court's oral Findings of Fact on the record at the Confirmation Hearing are also incorporated herein by reference.

45. To the extent that any provision designated herein as a Finding of Fact is more properly characterized as a Conclusion of Law, it is adopted as such.

#### **CONCLUSIONS OF LAW**

A. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(L). This matter arises under title 11, and jurisdiction is vested in this Court to enter a final order by virtue of 28 U.S.C. § 1334(a) and (b), 28 U.S.C. §§ 151, 157(a) and (b)(1), and the Standing Order of Reference in this District. These Findings of Fact and Conclusions of Law are being entered under Bankruptcy Rules 7052 and 9014.

B. The record made at the Confirmation Hearing was sufficient to enable the Court to make an informed judgment that the Final Plan is feasible, is fair and equitable, is in the best interest of all parties-in-interest, and should be approved.

C. The Final Plan complies with the applicable provisions of the Bankruptcy Code, as required by Section 1129(a)(1) thereof, including Sections 1122, 1123, and all of the applicable provisions of Section 1129(a) and 1129(b), and should be approved.

D. The Debtors, as proponents of the Final Plan, have complied with the applicable provisions of the Bankruptcy Code as required by Section 1129(a)(2) thereof.

E. Notice and distribution of the Plan and Disclosure Statement were appropriate under all the circumstances and complied with the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules. The opportunity for a hearing on these matters was full and adequate.

F. In accordance with Section 1141 of the Bankruptcy Code, (1) the Final Plan and each of its provisions, (2) all documents executed in connection with and pursuant to the terms of the Final Plan, and (3) the Confirmation Order shall be binding upon the Debtors upon each Person or entity acquiring or receiving property under the Final Plan, upon each lessor or lessee of property to or from the Debtors, upon each holder of a Claim against or equity Interest in the Debtors, whether or not the Claim or equity Interest of such Creditor or equity Interest holder is impaired under the Final Plan and whether or not such Creditor or equity Interest holder has filed, or is deemed to have filed, a proof of Claim or equity Interest, and upon each party to this Case, and irrespective of whether such provision of the Final Plan is specifically mentioned or otherwise referred to in these Findings of Fact and Conclusions of Law and Confirmation Order.

G. In accordance with Section 1141 of the Bankruptcy Code, the consideration distributed under the Final Plan shall be in exchange for and in complete satisfaction, discharge, release, and termination of, all Claims of any nature whatsoever against the Debtors or any of their assets; and, except as otherwise provided herein or in the Final Plan, or the instruments or other documents executed in connection with the Final Plan (and except with respect to



obligations which the Debtors are required to perform under the Final Plan), the Debtors shall be discharged and released pursuant to Section 1141(d)(1)(A) of the Bankruptcy Code from any and all debts of the kind specified in Section 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (a) a proof of Claim based upon such debt is filed or deemed filed under Section 501 of the Bankruptcy Code; (b) a Claim based upon such debt is allowed under Section 502 of the Bankruptcy Code; or (c) the holder of a Claim based upon such debt has accepted the Final Plan. The Confirmation Order shall be a judicial determination, effective upon the occurrence of the Effective Date, of discharge and termination of all liabilities of and all Claims against the Debtors, except as expressly set forth, or provided for, in the Final Plan, the instruments, and other documents executed in connection with the Final Plan, and the Confirmation Order. Pursuant to the Confirmation Order and the Final Plan, every holder of any discharged debt or Claim is permanently enjoined and precluded from asserting against the Debtors, the Reorganized Kitty Hawk, or against their assets or properties, any other or further Claim based upon any document, instrument or act, omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, except as expressly set forth, or provided for, in the Final Plan, the instruments, and other documents executed in connection with the Final Plan and the Confirmation Order.

H. Except as otherwise provided in the Final Plan or any other instrument or document entered into in connection with the Final Plan, on and after the Effective Date, in accordance with Section 1123(b) of the Bankruptcy Code, Reorganized Kitty Hawk shall retain and may enforce any claims, rights, and causes of action that the Debtors or the Estates may hold against any entity. Reorganized Kitty Hawk may pursue those rights of action, as appropriate, in accordance with what is in the best interest of Reorganized Kitty Hawk. No claims of the

Debtors against any Person or entity shall be discharged, released, or compromised pursuant to the Final Plan or the Confirmation Order except to the extent provided for in the Final Plan and all other instruments and documents executed and delivered pursuant to the Final Plan

I. The modifications to the Final Plan referred to hereinabove, including the Plan Supplement and the Amendments, comply with Section 1127 of the Bankruptcy Code.

J. Notwithstanding the entry of the Confirmation Order or the occurrence of the Effective Date, this Court shall retain jurisdiction as is set forth in Article 12 of the Final Plan.

K. The Confirmation Order shall be effective according to its terms upon the entry thereof. The Confirmation Order is a final Order immediately subject to appeal.

L. Pursuant to Sections 1123(a) and 1142(a) of the Bankruptcy Code, the provisions of this Order, the Final Plan, and all related documents, and all other agreements and documents executed and delivered pursuant to the Final Plan shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

M. Reorganized Kitty Hawk shall have the right, to the full extent permitted by Section 1142 of the Bankruptcy Code, to apply to this Court for an order, notwithstanding any otherwise applicable non-bankruptcy law, directing any appropriate entity to execute and deliver an instrument or perform any other act necessary to implement the Final Plan or the provisions of this Order.

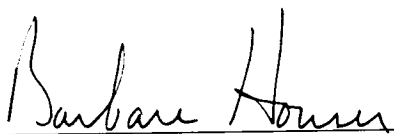
N. The Settlements are in the best interest of creditors and are hereby approved.

O. The Court's oral Conclusions of Law on the record at the Confirmation Hearing are incorporated herein by reference.

P. To the extent that any provision designated herein as a Conclusion of Law is more properly characterized as a Finding of Fact, it is adopted as such.

An appropriate Order will be signed and entered based upon these Findings of Fact and  
Conclusions of Law.

Signed: Aug. 5, 2002.

  
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HONORABLE BARBARA HOUSER  
UNITED STATES BANKRUPTCY JUDGE